KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP
3050 K STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20007
(202) 342-8400

NEW YORK, NY
TYSONS CORNER, VA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ
BRUSSELS, BELGIUM
AFFILIATE OFFICES
MUMBAI, INDIA

FACSIMILE
(202) 342-8451
www.kelleydrye.com

DIRECT LINE: (202) 342-8531
EMAIL: gmorelli@kelleydrye.com

October 24, 2008

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92

Dear Ms. Dortch:

On October 14, 2008, AT&T and Verizon submitted a joint letter in the above-captioned docket proposing what they characterized as "a simplified set of [default] rules" to govern "the obligations of interconnecting carriers in the context of comprehensive intercarrier compensation reform."[1] According to AT&T and Verizon, the purpose of the default rules contained in the letter is to "define the functions governed by a uniform terminating rate"[2] if the Commission chooses to subject all terminating traffic to Section 251(b)(5) of the Communications Act of 1934, as amended.[3] The undersigned carriers have previously voiced their concerns regarding the network interconnection provisions being promoted by these incumbent carriers.[4] The representations made by AT&T and Verizon in the *Oct. 14th Letter* fail to address those concerns or to provide a reasoned explanation as to why the Commission should

---

1 Letter from Hank Hultquist, AT&T, and Donna Epps, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Oct. 14, 2008) ("*Oct. 14th Letter*").

2 *Oct. 14th Letter*, at 1.

3 47 U.S.C. § 251(b)(5).

4 *See, e.g.,* Letter from 360networks(USA), inc., *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, WC Docket No. 04-36 (filed Sept. 29, 2008) ("*Sept. 29th Letter*").

include interconnection issues in its order revising the current intercarrier compensation regime. For those reasons and for the additional reasons discussed below, the Commission should reject the proposed default interconnection rules contained in the *Oct. 14th Letter*.

Moreover, as explained below, should the Commission decide to classify all IP-to-PSTN traffic as an information service, the Commission should specify that local exchange carriers ("LECs") are permitted, at their discretion, to provide transmission for IP-enabled services as a common carrier telecommunications service.

I. THE DEFAULT INTERCONNECTION RULES PROPOSED BY AT&T AND VERIZON SHOULD BE REJECTED

As a threshold matter, AT&T and Verizon have failed to offer any reason why the current regulatory framework governing interconnection between incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") would not suffice should the Commission adopt new intercarrier compensation rules and why new default interconnection requirements are necessary. Section 251(c)(2) of the Act[5] and the Commission's rules implementing that provision provide a comprehensive framework for the administration of interconnection rights and obligations between incumbent carriers and competitors. Under that framework, mandatory interconnection requirements are imposed on ILECs and a mechanism is provided to enforce those requirements. CLECs are given the ability to design their own networks, based on their particular business plans, and to negotiate interconnection arrangements with ILECs. More specifically, CLECs are free to choose the point of interconnection, the technology used to interconnect, and whether interconnection will be direct or indirect.[6] If the parties cannot agree on these issues, CLECs may request state commission arbitration to enforce their interconnection rights.[7] This regime has served the industry well, and the interconnection rates, terms and conditions that have resulted have allowed facilities-based competitors to gain a significant toehold in the market. Absent a compelling reason – which AT&T and Verizon have failed to offer – the current regime should not be disrupted by the Commission.[8]

---

5 47 U.S.C. § 251(c)(2).

6 *See Sept. 29th Letter*, at 2, quoting *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶¶ 206, 209, 997 (1996) ("*Local Competition Order*") (subsequent history omitted).

7 *See* 47 U.S.C. § 252(b)(1).

8 Even if there were a legitimate reason to alter existing interconnection rules – which there is not – AT&T and Verizon have failed to specify precisely how the default rules they advocate would modify or replace the particular rules that apply today and what the anticipated effects would be for ILECs and their competitors.

Moreover, AT&T and Verizon have failed to identify how their proposed default rules would interact with the procedural and substantive requirements of Sections 251(c)(2) and 252(b)(1) of the Act. For example, important questions regarding whether (or how) the default rules would affect a competitor's right under Section 252 to arbitrate interconnection rates and terms have not been specified. Further, AT&T and Verizon have not indicated how their proposed rules would relate to existing negotiated or arbitrated interconnection agreements (*e.g.*, could these rules be imposed on a CLEC during the term of an interconnection agreement through the change-in-law amendment process?). It is likewise unclear how (if at all) adoption of these rules would affect the ability of state commissions to impose interconnection requirements that deviate from the default rules. In the absence of these critical details, the Commission should not even contemplate adoption of the AT&T/Verizon proposal.

It is especially important that the Commission ignore entreaties by AT&T and Verizon to modify the current network interconnection regime since the particular default rules they would have the Commission adopt could have significant anticompetitive consequences. Under the proposed rules, "[t]he calling party service provider may at its sole discretion choose whether to interconnect directly or indirectly with the called party."[9] Further, "[t]he called party service provider must either permit interconnection at its edge ... or provide transport at no charge to that edge from a location in the same LATA where it does permit such interconnection."[10] The practical result of these particular proposals would be to turn the interconnection rights and obligations contained in Section 251 on their head. These provisions would force CLECs to accept interconnection obligations the Act imposes only on ILECs or to provide transport to ILECs free of charge.

Section 251(c)(2)(B) imposes on ILECs the obligation to interconnect with any requesting telecommunications carrier "at any technically feasible point within the carrier's network."[11] Thus, CLECs have the right to interconnect with ILEC networks on a direct or indirect basis.[12] Direct interconnection, however, is not required under Section 251(a) of non-ILEC telecommunications carriers.[13] Yet by establishing that the calling party service provider (whether CLEC or ILEC) may unilaterally choose direct or indirect interconnection, the AT&T/Verizon proposed rules would directly conflict with this statutory construct and would subject CLECs to the obligations of Section 251(c)(2) – obligations Congress expressly reserved for incumbent carriers.

---

9 *Oct. 14th Letter*, at 2.

10 *Id.*

11 47 U.S.C. § 251(c)(2)(B).

12 *See Local Competition Order*, at 15991, ¶ 997.

13 47 U.S.C. § 251(a).

The proposed AT&T/Verizon rules further state that the called party is obligated to permit direct interconnection at its edge or provide transport free of charge to that edge from the location in a LATA where it permits interconnection.[14] By granting an ILEC the right to refuse a CLEC direct interconnection, this rule would directly conflict with the ILECs' statutory obligation under Section 251(c)(2)(B) of the Act to permit CLECs to interconnect "at any technically feasible point within the [ILECs'] network."[15] Conversely, under this provision, a CLEC that refuses to voluntarily embrace the ILECs' Section 251(c)(2) obligation to permit direct interconnection would be forced to provide transport to its interconnection point free of charge. These outcomes are in direct conflict with the intent of Congress as embodied in Section 251.

Finally, the AT&T/Verizon proposed rules could result in unfair or irrational compensation situations. The proposed rules define a called party service provider's network edge as "the location of its end office, MSC, point of presence, or trunking media gateway, which PSTN routing conventions ... associate with the called party telephone number *unless that location subtends a tandem switch owned or controlled by the called party service provider*, in which case that tandem is the network edge for that call."[16] Where one carrier owns or controls the tandem and another carrier owns or controls the called party's end office, the calling party service provider would pay the tandem carrier a transit rate before paying the intercarrier compensation rate to the called party service provider. It is not clear how these new rules would interact with existing arrangements in interconnection agreements or, in situations where an ILEC is the calling party service provider and another ILEC owns or controls the tandem, how this rule would affect existing arrangements (*e.g.*, EAS agreements) between those ILECs.

For all of the foregoing reasons, the default interconnection rules advocated by AT&T and Verizon in the *Oct. 14th Letter* should be rejected by the Commission.

II. LECs MUST BE PERMITTED TO PROVIDE TRANSMISSION FOR IP-ENABLED SERVICES AS A COMMON CARRIER TELECOMMUNICATIONS SERVICE

Recent press accounts have indicated that the Commission may be considering whether to declare all IP-to-PSTN traffic to be an information service that is classified as interstate for jurisdictional purposes. Such a finding should be avoided because it would be over-reaching, particularly with respect to fixed VoIP services, where both the originating and terminating points of a call are no less ascertainable than with respect to TDM-based services –

---

14 *Oct. 14th Letter*, at 2.

15 47 U.S.C. § 251(c)(2)(B).

16 *Oct. 14th Letter*, at 1-2 (emphasis supplied).

and, thus, preemption of state jurisdiction would contravene the requirements of Section 152(b) of the Act.[17] If the Commission elects to make such an erroneous classification, however, it is essential that the Commission make clear that its classification of IP-to-PSTN traffic as an information service for purposes of assessment of intercarrier compensation does not undermine the rights of facilities-based CLECs to obtain unbundled network elements ("UNEs") and interconnection pursuant to Sections 251(c)(2) & (3) when providing IP-based services to end users or other carriers. CLECs are dependent upon access to cost-based interconnection and UNEs to deliver bundled IP-based services to literally millions of end user and carrier customers today, and great care must be taken not to undermine that critical regime.

One way to accomplish this would be for the Commission to clarify that the regulatory framework adopted for interstate VoIP services is the same as has been previously adopted for broadband Internet access services offered by wireline facilities-based providers.[18] In the *Broadband Classification Order*, the Commission classified wireline broadband Internet access service as an "information service."[19] Critically, however, the Commission permitted facilities-based wireline carriers to offer broadband Internet access transmission arrangements for wireline broadband Internet access services on either a common carrier or a non-common carrier basis.[20] Thus, wireline carriers were given the option of electing to offer the transmission input to their Internet access services as a "telecommunications service," provided that they did so on a common carrier basis and complied with regulatory requirements applicable to the provision of telecommunications services.[21] This treatment was consistent with a long history of permitting carriers to decide whether to offer their services on a common carrier or non-common carrier basis.[22] It should be adopted with respect to VoIP and other IP-enabled services as well if the Commission otherwise decides to declare IP-to-PSTN traffic to be an information service. Such an approach serves the public interest by "providing all wireline broadband providers the flexibility to offer these services in the manner that makes the most

---

17 47 U.S.C. § 152(b).

18 *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, CC Docket Nos. 02-33, *et al.* (released Sept. 23, 2005) ("*Broadband Classification Order*").

19 *Broadband Classification Order*, at ¶ 4.

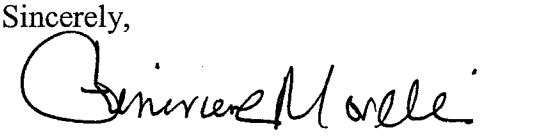
20 *Id.*, at ¶¶ 5, 89-95.

21 *Id.*, at ¶ 90.

22 *Id.*, at n. 280.

sense as a business matter and best enables them to respond to the needs of consumers in their respective service areas"[23] and ensures that essential interconnection is available where required to provide IP-enabled services.

Sincerely,



Brad E. Mutschelknaus
Genevieve Morelli
KELLEY DRYE & WARREN LLP
Washington Harbour
3050 K Street, N.W., Suite 400
Washington, D.C. 20007
202-342-8531 (phone)

Counsel to Broadview Networks, Inc., Cavalier Telephone, NuVox, and XO Communications, LLC

cc: Nicholas G. Alexander
Amy Bender
Scott Bergmann
Scott M. Deutchman
Greg Orlando

23 *Id.*, at ¶ 89; *see also* ¶ 94.